



P/35-4 CIP

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: M. Krysiak

Serial No.: 09/769,076

Examiner: A. Valenti

Filed: January 25, 2001

Art Unit: 3643

For: COLORED OR FRAGRANCED HORTICULTURAL.. Dated: March 11, 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

**DECLARATION OF LEE HOFFMANN**

**RECEIVED**  
MAR 19 2004  
**GROUP 3600**

I, Lee Hoffmann declare as follows:

1. I have 28 years of experience in the field of agricultural applications with Feeco International.
2. I have reviewed the application of the present invention.
3. I have reviewed the Stevens patent, 6,324,781; Edwards patent, 4,126,417; and Skelly patent 5,734,167.
4. Stevens relates to a mat for horticultural purposes for use in mulching applications, which comprises substantially a paper material. Stevens states that a coloring may be added to any mat to enhance the appearance of the mat in use. For example, Stevens states that the color green may be used to match a lawn or grass area.

5. Claim 26 and its dependent claims require a colored mulch product which consists essentially of a material comprising a fiber cellulose, clay, loam, sand , and/or a combination of same; a binding agent; and a dye and/or pigment; wherein the dye indicates to a user environmental conditions of the soil where the mulch is placed.
6. Although Stevens teaches adding a dye to complement the color of the area where the mulch is placed, the dye used by Stevens does not indicate to a user the environmental conditions of the soil where the mulch is placed.
7. Edwards does not teach that it is known in the art to color fertilizer. Edwards relates to a means for testing and treatment of soil in which a plant is growing in a container. A stick having a pH testing coating on one side and a nitrate testing coating on the other side, the coating changing colors during testing and being juxtaposed to colored sections for matching purposes to determine pH and nitrate levels. The kit includes color coated nitrate and acid pills as well as color coated fungicide and insecticide pills.
8. Edwards specifically states that the media cannot contain any fertilizer other than limestone used for pH correction, contains no quickly rotatably organics such as peanut hulls, corn cobs, sawdust, manure or sedged peat moss, contains no fine clay which would cloud the effluent.
9. Edwards further teaches that the container must drain quickly.
10. Edwards teaches recovering water from a container and testing the water recovered from a stick. Edwards specifically relates to testing the water which

seeps through a container having a plant. Edwards specifically states that the soil cannot contain any mulch because it would cloud the effluent. The soil and/or mulch is never colored.

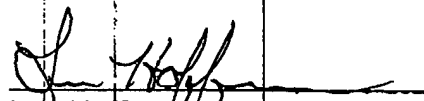
11. Stevens does not teach that the color of the mulch should change. Stevens adds color to the mulch so that the green mulch looks like the green grass. Stevens would not want the mulch to change color or else it would not serve the function taught by Stevens.

12. Edwards teaches against using mulch and does not teach adding a dye to a mulch which would indicate to a user environmental conditions. Therefore, Stevens in view of Edwards does not teach or make obvious the claims of the present invention.

13. Skelly relates to providing fluorescent markers along a field. It does not discuss providing a fluorescent dye to a mulch product.

14. I hereby declare that all of the statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent application to which it relates or any patent issued thereon.

Dated: 3/12/04

  
Lee Hoffmann